



IN THE HIGH COURT OF JUDICATURE OF BOMBAY  
BENCH AT AURANGABAD

921 WRIT PETITION NO. 11655 OF 2023

Sachin Ramanlal Kasliwal & another .....Petitioners

VERSUS

M/s Sanskruti Buildcom & another .....Respondents

.....

Mr. A. P. Bhandari, Advocate for the Petitioners.

Mr. A. N. Kakade, Advocate for the Respondents.

**CORAM : R. M. JOSHI, J.**

DATE : 4<sup>th</sup> DECEMBER, 2024.

PER COURT :

1. This Petition takes exception to the judgment and order passed in MCA No. 196/2022 whereby the order dated 14.11.2022 passed in Special Civil Suit No. 1144/2022 below Exhibit 5 came to be set aside.

2. Petitioners are Plaintiffs. They filed suit for specific performance of contract on the basis of oral agreement between the parties for sale of the suit property for total consideration of Rs.75,00,000/-. It is their further case that out of Rs.75,00,000/- an amount of Rs. 65,00,000/- is paid to the Defendants/Respondents. It is apprehended by the Plaintiffs that

Defendants are likely to create third party interest in the suit property and hence application Exhibit 5 was moved. Learned Trial Court, by order dated 14.11.2022, allowed the application and restrained the Defendants from creating third party interest in the suit property till decision of the suit. Defendants challenged this order before the Appellate Court by filing appeal. By passing the impugned judgment and order, order passed below Exhibit 5 came to be set aside.

3. By relying upon judgment of Hon'ble Supreme Court in case of Esha Ekta Apartments Chs Limited and others vs. Municipal corporation of Mumbai and another, **(2012) 4 Supreme Court Cases 689**, learned counsel for Petitioners/Plaintiffs submits that the Appellate Court has committed error in causing interference in the impugned order before it. To support his submissions, he has specifically relied upon paragraph No. 19 of the said judgment which reads thus :-

*“19. We have considered the respective submissions and carefully scrutinised the record. The scope of the appellate court's power to interfere with an interim order passed by the court of first instance has been considered by this Court in several cases. In Wander Ltd. v. Antox India (P) Ltd., the*

*Court was called upon to consider the correctness of an order of injunction passed by the Division Bench of the High Court which had reversed the order of the learned Single Judge declining the respondent's prayer for interim relief. This Court set aside the order of the Division Bench and made the following observations :*

*"14. .... In such appeals, the appellate court will not interfere with the exercise of discretion of the court of first instance and substitute its own discretion except where the discretion has been shown to have been exercised arbitrarily or capriciously or perversely or where the court had ignored the settled principles of law regulating grant or refusal of interlocutory injunctions. An appeal against exercise of discretion is said to be an appeal on principle. Appellate court will not reassess the material and seek to reach a conclusion different from the one reached by the court below if the one reached by that court was reasonably possible on the material. The appellate court would normally not be justified in interfering with the exercise of discretion under appeal solely on the ground that if it had considered the matter at the trial stage it would have come to a contrary conclusion. If the discretion has been exercised by the trial court reasonably and in a judicial manner the fact that the appellate court would have taken a different view may not justify interference with the trial court's exercise of discretion."*

He also placed reliance on judgment of Hon'ble Supreme Court in case of Wander Ltd. vs. Antox India P. Ltd., **1990(2) ARBI LR 399** and judgment of learned Single Judge of this Court in case of Jalna Hospital vs. Jalna Critical Care and Research Center Pvt. Ltd. In Appeal From Order No. 18/2021.

4. The sum and substance of his contentions before this Court is that the Appellate Court has exceeded the jurisdiction which was entrusted to it while assessing correctness of the interim order. It is his submission that unless discretion has been exercised by the Trial Court arbitrarily, capriciously or perversely or where the Court had ignored the settled principles of law regulating grant or refusal of the interlocutory injunction, interference cannot be caused. He further submits that if the order of the Trial Court is a possible view, the same cannot be substituted by the Appellate Court. To support his submission, he drew attention of the Court to the facts of the present case more particularly, written statement filed by Defendants before the Trial Court wherein a statement is made that the Defendants are not interested in creating third party interest in the suit property. Similarly, there is admission of receipt of Rs. 57,10,000/- from Plaintiffs. It is argued that the case of the

Defendants does not become acceptable that he has obtained handloan from the Plaintiffs. It is his submission that question of any person obtaining handloan in installments does not arise.

5. Learned counsel for Respondents supported the impugned order. On instructions, he makes a statement that the Respondents/original Defendants are ready to deposit sum of Rs.57,10,000/-.

6. There cannot be any dispute made with regard to the proposition canvased by learned counsel for the Petitioners that the scope for causing interference in the order passed by the Trial Court at interim stage would be limited to the extent as specified by Hon'ble Supreme Court in the above quoted judgment. Perusal of the said observation also shows that apart from the fact that the order is passed arbitrarily or capriciously, it need to be seen by the Appellate Court that the order is passed against the settled principle of law regulating grant or refusal of injunction.

7. Here in this case, it is the case of the Plaintiffs that there was oral agreement in respect of sale of the suit property for

agreed consideration of Rs. 75,00,000/- and out of which, sum of Rs.67,00,000/- is paid to the Defendants. The Defendants have disputed said fact. Though it is accepted that they have received sum of Rs. 67,00,000/-, however there is specific claim that the said amount is received by way of handloan. No doubt, there is statement made by the Defendants in the written statement that they are not interested in selling the property however, such cannot bind any party in perpetuity.

8. Though the learned Trial Court has taken into consideration the fact of receipt of Rs. 57,10,000/- as per the say of Defendants as well as has considered the statement made in the written statement to the extent that Respondents/Defendants are not inclined to sell the suit property, it has ignored the fact as to whether in view of the disputed questions as to whether there is any agreement to sell, whether payment received by the Defendants is part consideration, whether there could be injunction against rightful ownership of the suit property. It is not the law that in each and every case of suit for specific performance of contract on the basis of agreement to sale of immovable property, injunction needs to be granted against defendant. No doubt in appropriate cases,

irrespective of provisions of Section 52 of Transfer of Property act, injunction can be issued. In the instant case, there is dispute about existence of the agreement to sale and hence question of grant of injunction against true owner of the suit property does not arise. Apart from this, the position of law is fairly settled to say that if any transaction entered into during lis pendens, is subject to outcome of the suit and decree passed therein would bind the subsequent purchaser. Learned Trial Court has ignored this position of law and proceeded to allow Exhibit 5. The Appellate Court has rightly caused interference therein. In peculiar facts of the case, no interference is called for in the impugned order.

9. Learned counsel for the Petitioners seeks extension of interim relief for the period of 8 weeks.

10. Learned counsel for Respondents opposed the said request.

11. Since the order passed by this Court is in existence atleast for a period of over one year, this Court finds no reason to reject the request made on behalf of the Petitioners. Hence, order

dated 20.09.2023 stands extended for a period of four weeks from today.

**( R. M. JOSHI )**  
**Judge**

dyb